

1 THE HONORABLE THOMAS S. ZILLY
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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
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10 BUNGIE, INC., a Delaware corporation,
11 Plaintiff
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13 v.
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15 AIMJUNKIES.COM, a business of unknown
16 classification; PHOENIX DIGITAL GROUP
17 LLC, an Arizona limited liability company;
18 JEFFREY CONWAY, an individual; DAVID
19 SCHAEFER, an individual; JORDAN GREEN,
20 an individual; and JAMES MAY, an individual,
21 Defendants.

22 Cause No. 2:21-cv-0811 TSZ
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25 **DECLARATION OF DAVID
26 SCHAEFER IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS AND/OR REFER TO
MANDATORY ARBITRATION**

27 **Note on Motion Calendar:
February 4, 2022**

28 **Oral Argument Requested**

I, David Schaefer, under penalty of perjury under the laws of the United States, state and declare as follows:

1. I am an Officer and Director of Defendant Phoenix Digital Group LLC as well
2. as one of the individual Defendants in the above captioned matter and have
knowledge of the facts stated herein.
3. Phoenix Digital Group LLC is a Delaware Limited Liability Company with
4. offices in San Jose California, Munds Park Arizona and Portland Oregon. The
5. company has no registered agent in Washington and has no stores, employee's,
6. offices, outlets or other facilities in Washington and never has. The company
7. does not actively direct or advertise its products to Washington consumers and
8. never has.

- 1 3. To the extent I can understand if from the Complaint Bungie has filed, the
- 2 software product Bungie refers to in its Complaint as “cheat software” was
- 3 created at least as early as March 2019 and was offered to the public at least as
- 4 early as April 2019.
- 5 4. Contrary to the unsupported allegations in Paragraph 29 of Bungie’s Complaint
- 6 that, “On information and belief, cheat software may also be used to
- 7 surreptitiously install malware and other harmful software on the computers of
- 8 cheat software users,” this is simply untrue. None of what Bungie calls our
- 9 “cheat software” operates in this manner or does this and never has.
- 10 5. Similarly, and contrary to the unsupported allegations in Paragraph 53 of
- 11 Bungie’s Complaint that Phoenix Digital Group offer a “Destiny 2 No Recoil”
- 12 feature that, “purports to eliminate recoil from weapons, allowing the user to
- 13 stay locked on to his/her enemies,” no such feature has ever been incorporated
- 14 into what Bungie calls our “cheat software.”
- 15 6. On November 4, 2020, Phoenix Digital Group received a “cease and desist”
- 16 letter from attorneys for Bungie demanding, among other things, that Phoenix
- 17 Digital Group cease further manufacture, sales or other distribution of the “cheat
- 18 software. Attached as Exhibit A is a true and correct copy of the November 4,
- 19 2020 cease and desist letter Phoenix Digital Group received from Bungie’s
- 20 lawyers.
- 21 7. Because the products Bungie refers to as “cheat software” made up only a very
- 22 small part of Phoenix Digital Group’s product line and was only minimally
- 23 profitable, Phoenix Digital Group complied with Bungie’s demand and ceased
- 24 further distribution of the products on Nov 12th 2020.
- 25 8. During the entire life of the products Bungie refers to as “cheat software,”
- 26 overall sales of the products were \$27,748.00 and Phoenix Digital Group’s gross
- 27 profits on these sales amounted to \$13,874.00. Distribution of these products to

1 Washington State residents' amount to \$416.22 or about 3 percent of the overall
2 sales.

3 9. Because of the limited market for what Bungie calls our "cheat software"
4 Phoenix Digital Group has made no sales or other distribution of the software
5 since November 12th 2020 and has no present plans to do so.

6 Dated January 10, 2022.

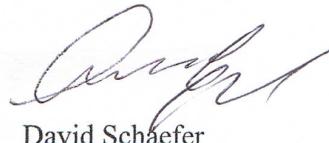
7 S/David Schaefer

8 David Schaefer

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